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January 15, 2021

The Honorable Steven Tiscione
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Capital 7 Funding v. Wingfield Capital Corp., et al., Case # 1:17-cv-2374-RRM-ST; Opposition to Defendants' motion to extend discovery, motion for abeyance in the alternative and motion for adjournment

Dear Judge Tiscione:

We write on behalf of Plaintiff Capital 7 Funding ("Capital 7") in opposition to the motion to extend the discovery schedule filed by Defendants Burgis Sethna, Heath Wagenheim, and Wingfield Capital Corporation ("Sethna Defendants"), or, in the alternative, an abeyance of Defendants' motion to extend the discovery schedule until after the pending motion to vacate Defendants' default has been decided.

The parties also jointly request an adjournment of the hearing set for January 20, 2021. If the Court holds the motion to extend time in abeyance, the parties request the adjournment *sine die* until Defendants' motion to vacate their default is decided. If the Court does not hold the motion in abeyance, the parties request that the hearing be rescheduled to January 21, 2021, or any date thereafter convenient for the Court.

Plaintiffs oppose the extension because the Burgis Defendants are currently in default because they have not meaningfully attempted to participate in this case for more than six months. Their lack of participation has already resulted in the Clerk of the Court entering defaults against the Burgis Defendants on July 27, 2020. ECF Nos. 89, 90, and 93.

I and Plaintiffs sympathize with defense counsel's family tragedy and other challenges caused by the ongoing COVID-19 pandemic. These tragedies and challenges, however, do not account for why the Burgis Defendants and their counsel failed to take even the smallest steps to contact Plaintiffs counsel for the past seven months. They failed to respond to the Complaint after the Court denied their Rule 12(b)(6) motion to dismiss. They remained silent after Plaintiff filed for entries of default and when the Clerk subsequently granted them. They made no attempt to contact Plaintiffs' counsel prior to filing their motion to extend the discovery schedule in violation of Your Honor's Individual Rule I.D. The Burgis Defendants appeared to

abandon their defense of the case until January, 11, 2021, the day fact discovery was scheduled to end. The Court ought not countenance further delay on Defendants' part and should deny they motion to extend the discovery schedule.

In the alternative, the parties request that the Court hold the Burgis Defendants' motion in abeyance until the Court has decided the pending motion to vacate the entries of default against the Burgis Defendants, filed at ECF No. 96. The parties plan to submit a joint briefing schedule for that motion to the Court early next week.

The parties also request that the hearing scheduled for January 20, 2021, be rescheduled to January 21, 2021, or any day thereafter convenient to the Court because the undersigned and counsel for the Burgis Defendants have other matters currently scheduled on January 20, 2020. Should the Court grant the requested abeyance, the parties request that the hearing be adjourned *sine die* until the motion to vacate defaults has been decided.

The Burgis Defendants join only in the requests for an abeyance and adjournment.

Should the Court grant the motions for abeyance or adjournment, no other currently-scheduled deadlines or dates would be affected.

Thank you for your consideration of this letter.

Respectfully,

/s/
Nicholas Bowers, Esq.
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cc: All counsel via ECF